IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WP(C).No. 12587 of 2007(W)

PETITIONER:

GEORGE THOMAS, VADAKKEKALAM,
SEA VIEW WARD, ALAPPUZHA-688012.

BY ADV. SRI.V.GIRI
SRI.C.MURALIKRISHNAN (PAYYANUR)
SRI.MANURAJ. K.J

RESPONDENTS:

---

1. STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT, SHIPPING AND COASTAL
INLAND NAVIGATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. LAND ACQUISITION OFFICER,
SPECIAL TAHSILDAR(LA)GENERAL,
ALAPPUZHA.

3. REVENUE DIVISIONAL OFFICER,
ALAPPUZHA.

4. DISTRICT COLLECTOR, ALAPPUZHA.

BY GOVERNMENT PLEADER SRI.T.G.SUNIL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/07/2007, ALONG WITH WPC NO. 12874 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF NOTIFICATION DATED 16.12.1997 UNDER SECTION 4(1) OF THE LAND ACQUISITION ACT, 1894.

EXT.P2 TRUE COPY OF SECTION 6(1) DECLARATION PUBLISHED IN MATHRUBHOOMI DAILY DATED 8.1.1999.

EXT.P3 TRUE COPY OF THE RULE NO.15(3) NOTICE DATED 19.7.2005 ISSUED BY THE TAHSILDAR.

EXT.P4 TRUE COPY OF THE NOTICE UNDER SECTION 12(2) BY THE LAND ACQUISITION OFFICER.

EXT.P5 TRUE COPY OF THE NOTICE DATED 15.12.2006 ISSUED FROM THE OFFICE OF RDO.

EXT.P6 TRUE COPY OF WRITTEN REPRESENTATION WAS SUBMITTED BEFORE THE HON'BLE CHIEF MINISTER ON 29.12.2006.

EXT.P7 TRUE COPY OF THE REPRESENTATION DATED 22.3.2007 SUBMITTED BY THE PETITIONER BEFORE RESPONDENT 3.

EXT.P8 TRUE COPY OF THE REPRESENTATION DATED 22.3.2007 SUBMITTED BY THE PETITIONER BEFORE RESPONDENT NO.4

EXT.P9 TRUE COPY OF THE SKETCH SHOWING THE LIE OF THE LAND IN QUESTION.

EXT.P10 TRUE COPY OF THE JUDGMENT DT. 5TH AUGUST 2003 IN OP.7790 OF 2003.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.A. to Judge.

WPC.

K.PADMANABHAN NAIR, J.

W.P.(C) Nos.12587 & 12874 of 2007

Dated this the 3rd July, 2007.

J U D G M E N T

The relief sought for in these two writ petitions are identical. The main prayer in both writ petition is for a declaration that the entire land acquisition proceedings initiated in respect of the properties owned by the petitioners lapsed, since no award was passed within two years from the last date of publication of declaration under Section 6(1) of the Land Acquisition Act. (in short 'the Act')

2. The petitioner in W.P.(C) 12587 of 2007 was the owner of 20.750 cents of land in Survey No.26/14B/1 of Mullackal Village. Late. Sri.Jose Thomas was the owner in possession of 15.125 cents of land comprised in Survey No.26/14B/1 of Mullackal Village. Sri. Jose Thomas died on 26.2.1998, and properties devolved upon his widow and children, who are the petitioners in W.P. (C) 12874/2007. These properties along with other properties adjoining and adjacent thereto, having a total area of 2.4373 hectares of land, were notified for acquisition by the respondents, for the purpose of establishing Inland Water Transport Terminals for National

Waterways at Mullackal. Section 4(1) notification under the Act, was issued on 16.12.1997 and published in the Mathrubhoomi daily, dated 16.12.1997. Respondents invoked powers under Section 17(4) of the Act, and enquiry under Section 5A of the Act was dispensed with. A declaration under Section 6 of the Act was published on 16.12.1998, and the same was published in Mathrubhoomi daily, dated 8.1.1999. Though in the initial notification, the area to be acquired was stated as 2.4373 hectares, as per Section 6(1) declaration, an area of 2.2277 hectares of land alone were sought to be acquired. According to the petitioners, there after no action was taken by the 4th respondent for completing the acquisition within the period of two years. No notice was given and no plan was prepared under Section 8 of the Act. It was also averred that no notification under Section 9(1) of the Act or 9(3) of the Act were also served on the petitioners. But, the second respondent, all of a sudden, issued notices, dated 19.7.2005, under Rule 15(3) of the Land Acquisition Rules, (for short 'the Rules') directing the petitioners to vacate the land before the evening of 26.7.2005. It was averred that in that notification, there was an averment to the effect that an award was already passed. It is averred that Rule 15(3) notices were served on the petitioners only on

29.7.2005. It was also averred that a notice under Section 12(2) of the Act was served on the petitioner on 21.10.2005 in W.P.(C) No.12587/2007. In W.P.(C) No.12874/2007, Section 12(2) notice was issued in the name of Late Sri. Jose Thomas, who died in the year 1988. It was averred that the award was a single one covering an area of 32.12 Ares of land, comprised in Survey No.26/14B1-1. It was further averred that the petitioner in W.P.(C) No.12587/2007 filed a petition under Section 18 of the Act stating that he is not accepting the award, but seeking a reference. In W.P.(C) No. 12874/2007, it was averred that since the notice was issued in the name of a dead person, the first petitioner approached the Land Acquisition Officer and informed him about the demise of her husband, but no communication was issued to the heirs of the deceased owner. It was averred that again another notice was issued stating that unless the petitioners vacate the land on or before 30.12.2006, the possession of the same will be taken under Section 47 of the Act. It was averred that Section 17(4) of the Act was invoked with the mala fide intention of denying the petitioners to raise their objections. It was contented that the land belonging to the petitioners were acquired not for any public purpose, but for the purpose of rehabilitating some other persons, whose land

were acquired under the very same notification. It was averred that such a purpose is not a public purpose, and runs counter to the very purpose of acquisition. It was contented that Section 4(1) notification was issued on 16.12.1997 and declaration under Section 6(1) of the Act was published on 8.1.1999 in the Mathrubhoomy Daily, but the intimation under Section 12(2) of the Act, as evidenced by Ext.P4 order, published on 21.10.2005, which is far beyond the statutory period prescribed under Section 11 A of the Act. So, the petitioners pray for a declaration that the entire proceedings had lapsed, or in the alternate to quash notification under Section 4(1) and declaration under Section 6(1) of the Award.

3. The fourth respondent filed a counter affidavit contending that Section 4(1) notification was issued for an area of 2.4373 hectares of land, comprised in Sy. No.26/10 to 14 AB of Mullackal Village. The lands belonging to the petitioner in W.P.(C) No.12587/2007, and the lands belonging to Sri.Jose Thomas were notified to be acquired. Section 4(1) notification was published on 17.12.1997, and it was published in Deshabhimani and Mathrubhoomi dailies on 22.1.1998 and 24.1.1998 respectively. The draft declaration under Section 6 of the Act was published in the Gazette on

16.12.1998, and in Mathrubhoomi daily dated 8.1.1999. It was also submitted that as per Section 6(1) notification, the area notified was 2.2277 hectares of land. It was contended that Sri.P.J.Tomy and 43 others of Mullackal Village filed O.P.No.4023/1998 before this Court, and the entire land acquisition proceedings were stayed from 6.4.1998 to 14.8.2002. It was averred that on 14.8.2002, the stay was vacated and detailed valuation was prepared and the same was approved by the Collector on 8.11.2002. The enquiry was conducted on 22.11.2002 with due notice to all parties. Notices under Sections 9(1) and 9(3) of the Act were also served. It was averred that from the notified area, 30 Ares of land belonging to 13 land owners could not be taken possession of due to the protest of 9 land owners, who were residing in those properties.

4. It was averred that one Sri.V.P.Kurian and 4 others had filed O.P.No.7790/2003 before this Court for a direction to the Land Acquisition Officer to pass the award. Finally, on 5.8.2003, this Court directed the respondents to pass final award and disburse the money within three months from the date of receipt of a certified copy of the judgment. It was contented that the judgment passed in OP.No.7790/2003 was challenged by State by filing SLP (c)

22019/2003 before the Honourable Supreme Court. The Honourable Supreme Court stayed the operation of the order passed by the High Court. The S.L.P. was admitted and numbered as Civil Appeal No.2824/2005. The Civil appeal was finally disposed of by the Apex Court on 21.4.2005. It was contented that the Hon'ble Supreme Court directed the State to pass an award within three months from that date, and accordingly an award was passed on 4.6.2005 and 19.7.2005. Thus the award was passed within three months from the date of receipt of a copy of the judgment of the Supreme Court. It is also averred that notices under Section 15(3) of the Rules were served on the parties on 21.7.2005, and the property was taken possession of on 19.9.2005. It is also averred that notices under Section 12(2) of the Act was served on the petitioners and the award amount was deposited in Sub Court, Alappuzha, under Section 31(2) of the Act. It is further contented that passing of the award was delayed only because of the stay orders passed by this Court, and the Supreme Court, and if that period is excluded, the award is well within the period. Therefore, the respondents prayed for a dismissal of the writ petitions.

5. The core question arising for consideration in these cases is whether the Land Acquisition proceedings lapsed. Regarding notification under Section 4(1) of the Act, and declaration thereto, there is no dispute. Section 6(1) declaration was published in Mathrubhoomi daily dated 8.1.1999. So, the award ought to have been passed within two years from that date. But, in the meanwhile, one Sri.P.J.Tomy and 43 others filed O.P.No.4023/98, and this Court passed an interim order staying the acquisition proceedings. Initially, the interim order was passed on 6.4.1998. It was extended by two weeks on 16.6.1998, which expired on 30.6.1998. There was no stay from 1.7.1998 till 24.1.1999. But the interim order of stay was revived and extended upto 14.8.2002, and on which date, the stay was vacated.

6. According to the petitioners, even if that period is excluded, an award ought to have been passed on or before 14.8.2004. But admittedly in this case, the award was passed only on 4.6.2005 and 19.7.2005, which is far beyond the period of two years prescribed under Section 11A of the Act. In view of the factual dispute, I have called for the papers of the three writ petitions also and perused the same. The petitioners have produced copy of

judgment passed by this Court in OP.No.7790/2003 and respondents have produced copy of the judgment of the Hon'ble Supreme Court in Civil Appeal No. 2824/2005. After disposal of OP.No.4023/1998, there were five other Original Petitions, as O.P.No.16492/1998 and connected Original Petitions, which were also filed challenging the purpose. In O.P.No.1126/1999, which was heard along with O.P.No.16492/1998, the very same notification was challenged. Those Original Petitions were disposed of on 26.5.2000. After the disposal of O.P.No.4023/1998, Sri.V.P.Kurian and four others filed O.P.No.7790/2003 for a direction to the Land Acquisition Officer to disburse the compensation amount within a time frame. The State informed the Court that it does not intend to proceed with the acquisition. The learned Judge before whom the case came up for hearing, referred it to be heard by a Division Bench. The Division Bench disposed of the case on 5.8.2003. The operative portion reads as follows:-

> "Taking the totality of circumstances into consideration, we direct that the State Government shall issue the final award and disburse the money within three months from the date of receipt of a certified copy of this judgment. The writ petition is accordingly disposed of. No costs."

7. However, the matter did not end there. The State carried the matter in appeal before the Supreme Court by filing SLP (C) No.22019/2003. Since Leave was granted and the case was numbered as Civil Appeal No.2824/2005. The Honourable Supreme Court after considering all aspects of the matter held that the lands at Alappuzha District covering an area of 2.2227 hectares of land was the only strip of land in respect of which possession could not be taken by reason of the repeated orders of stay passed by this Court. The operative portion of the judgment reads as follows:-

> "The High Court had directed that the award should be passed within a period of three months. By virtue of an order of stay obtained from this Court, the award has not yet been passed. We, accordingly extend the time for passing the award by another period of 3 months from today. If any amount has already been deposited by the State Government pursuant to order of this Court, the same together with any accumulated interest thereon is permitted to be withdrawn by the State Government for the purpose of re-depositing the same on account of the compensation to be paid to the landowners of the affected area in Mullackal."

8. It is trite law that when Section 6 declaration is issued, the land acquisition authorities are bound to pass an award within two years from that date, in view of the mandatory provisions

contained in Section 11A of the Act. But in this case, the award could not be passed in view of the interim order passed by this Court, as well as the Honourable Supreme Court. Initially O.P.No.4023/1998 was filed and this Court stayed the acquisition proceedings. Thereafter, OP.No.1126/1999 was filed by one Philip Vadakkedath alleging that in case if the lands are acquired, that will affect the "Nehru Boat Race". This Court by judgment dated 26.5.2000 repelled that contention and dismissed that Original Petition and connected Original Petitions. Subsequently, Sri.V.P.Kurian and 4 others filed O.P.No.7790/2003. The judgment of the Division Bench passed in that case shows that this Court directed the Land Acquisition Officer to proceed with land acquisition in its entirety and complete the acquisition proceedings. The Honourable Supreme Court also took note of the fact that the proposed acquisition was not confined to Alappuzha alone, but the lands at Alappuzha District covering an area of 2.2277 hectares was the only strip of land in respect of which possession could not be taken by reason of the repeated orders of stay passed by this Court. Accordingly, the Honourable Supreme Court extended the time for passing of the award by a period of three months from 21.4.2005.

9. Sri.V.Giri, the learned counsel appearing for the petitioners argued before me that the stay passed by this Court in OP.No.4023/1998 will affect only the acquisition proceedings of the parties in that Original Petition. It is also argued that the direction of the Division Bench of this Court and Honourable Supreme Court will bind only the persons who were parties to O.P.No.7790/2003 and not any persons who was not a party to that proceedings. The learned counsel has further argued that it is settled position of law that normally the order passed by the Court will not bind a person who is not a party to the proceedings, unless it is a judgment in rem or the proceedings is initiated in representative capacity. It is argued that none of the Original Petitions referred to in the counter affidavit of the respondent were filed in representative capacity, and as such, any order passed in those proceedings can bind only to the parties to those proceedings. It is also argued that the Court can only exclude the period during which proceedings were pending before it, but cannot enlarge or extend a period statutorily fixed and the Court cannot legislate. It is argued that Legislature alone is competent to extend the period. There cannot be any dispute regarding the legal prepositions pointed out by the counsel.

10. The records show that 2.2227 hectares of land proposed to be acquired were classified into different categories. The Land Acquisition Officer passed one award each in respect of each category of land. No individual awards were passed. Ext.P1 notification was for an area of 2.2277 hectares of land. The declaration was also for that area. For the sake of convenience, separate awards were passed in respect of each group or class of land. There was only one notification for acquisition. The direction of this Court, as well as the Supreme Court was not confined to the land owned by the petitioners in the Original Petitions, but was in respect of Section 4(1) notification and Section 6(1) declaration, as a whole. So merely because one or two persons whose lands were included in the notification and declaration did not join as party to those Original Petitions, the respondents are not entitled to split up the cases of those persons and deal with them separately. There is only one notification and declaration under Section 6(1) of the Act. So, the respondents have no other option, but to complete acquisition of land not only in respect of the parties to the Original Petitions, but in respect of all persons whose lands were covered by the notification. There is no merit in the contentions raised by the petitioners, that

since they are not parties to any of the earlier Original Petitions, they are not bound by the directions of the Division Bench of this Court, as well as the Supreme Court.

11. It is also argued that the public purpose projected in Section 4(1) of the notification is for construction of terminals for Inland National Waterways. It is argued that the petitioners were under the bona fide impression that the purpose for acquiring their land was for construction of Inland National Waterways, as stated in the notification under section 4(1) of the Act, and declaration thereto under Section 6(1) of the Act. But recently, some of the persons in the locality attempted to trespass into their property. It is argued that they made enquiries, and they were informed that their lands were acquired not for the construction of Inland National Waterways, but to rehabilitate some of the persons whose lands were acquired for the same purpose under the very same notification. It is argued that there cannot be a double standard. If the persons who were evicted from their lands, on account of acquisition or construction of Inland Water Transport Terminal, are entitled for rehabilitation, the petitioners are also entitled to get the same benefit. It is argued that their lands cannot be used for any other purpose, other than the purpose notified.

It is argued that the State cannot distribute the land to others, after acquiring the same on the pretext that the same is needed for construction of Inland Water Transport Terminal.

12. It is not disputed that award was passed prior to 21.10.2005. In W.P.(C) 12587/2007, the petitioner himself has produced the notice issued under Section 12(2) of the Act, as Ext.P4. They did not challenge the notification under Section 4(1) of the Act, or the declaration thereto. Hence, I do not think, it is just and proper to quash the award already passed in this case.

13. The learned counsel appearing for the petitioners, has pointed out that the petitioners have not received the notice or award issued under Section 12(2) of the Act. Petitioners in W.P.(C) 12874/2007, are the widow and children of Late Jos Thomas. They have produced Ext.P3, the copy of the death certificate which shows that Sri.Jos Thomas, the owner of the land, died on 26.2.1998. Admittedly, notices under Sections 9(1), 9(3) and 12(2) of the Act were issued after 2002, in the name of Jose Thomas. The files produced for my verification show that the notices issued in the name of Jos Thomas were returned unserved. The petitioners in W.P.(C)

12874/2007, who are the widow and children of the Original owner are the owners of the property. No notices were issued to them. So, they are prevented from filing any objection to Sections 9(1) and 9 (3) notices and make claim for enhancement, under Section 18 of the Act. It is also submitted by the learned Government Pleader that both the cases were referred to the Sub Court, Alappuzha, under Section 31 (2) of the Act, and the amounts were deposited. So, instead of quashing the award passed in favour of a dead person and directing the Sub Judge to return the records to the Land Acquisition Officer for passing a fresh award, I am of the considered view that in the interest of justice, the petitioners can be permitted to file an application under Section 18 of the Act claiming enhancement within one month from the date of receipt of a copy of this judgment, and with a direction to the Land Acquisition Officer to receive the same, in case, it is filed within the time allowed, treat the same as one filed within the time limit provided under Section 18 of the Act, and refer the case under Section 18 of the Act, also to the Sub Court, to be incorporated with reference letter already issued in respect of the property of Jose Thomas under Section 31(2) of the Act. It is open to the petitioners to file a petition before the Court of Subordinate Judge, wherein, the land

acquisition cases are pending to implead them. If such a petition is filed, the learned Sub Judge shall allow the same and implead them as parties, and dispose of the reference on its merits.

14. The records are not clear as to whether any individual notice under Section 12(2) of the Act was served on the petitioner in W.P.(C) No.12587/2007 within a reasonable time of passing of the award. A perusal of the records show that a notice issued to him under Section 9 (1) of the Act was returned by Sri.M.A.Kasim, Chain Man, on 18.11.2002, before the Land Acquisition Officer. There is nothing on record to show that he was served with section 9(3) notice or notice issued under Section 12(2) of the Act. In the writ petition filed by George Thomas, it was averred that he came to know about the passing of the award on 20.10.2005, and he filed a petition under section 18 of the Act, claiming enhancement. If such a petition is filed, that petition shall be treated as one filed within the period of limitation, and his case also must be referred to the Land Acquisition Court, under section 18 of the Act. It is open to the petitioner in W.P.(C) No.12587/2007 to file a petition under Section 18 of the Act, before the Land Acquisition Officer, within a period of one month from the date of receipt of a copy of this judgment. If the

petitioner files such a petition, the same shall also be treated as one filed within the statutory period, and the Land Acquisition Officer shall refer his case also under Section 18 of the Act for enhancement, to be clubbed with the reference already made.

15. I make it clear that the fact that the petitioners are filing petitions under Section 18 of the Act claiming enhancement with a prayer to refer the matter to the Sub Court, will not preclude them from challenging this judgment. It is open to the petitioners to produce a copy of this judgment before the Land Acquisition Court, where the references under Section 31(2) of the Act are pending for the purpose of consolidation or the reference as under Section 31(2) and Section 18 of the Act.

In the result, these writ petitions are dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.